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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/796,697

03/09/2004

Benoit Abribat

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2889

23657 7590 05/22/2009

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

05/22/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/796,697	<b>Applicant(s)</b> ABRIBAT ET AL.	
	<b>Examiner</b> ALTON N. PRYOR	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26,28-30,32-34,36,37,39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26,28-30,32-34,36,37,39 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's arguments filed 3/5/09 have been fully considered but they are not persuasive. See discussion below. Previous rejections not addressed below have been withdrawn.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26,28-30,32-34,36,37,39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Capuzzi et al (US 5905072) and Auda et al (US 6586366). Capuzzi et al teach adjuvants for microemulsion fungicidal compositions (abstract) comprising methyl esters of fatty acids, anionic surface active agents such as sulfosuccinates, at least one nonionic surface active agents such as alkyl polyglucosides, and at least one additional nonionic surfactant such as sorbitan esters of fatty acids (column 1, lines 38-67, column 2, lines 44-62). The adjuvant microemulsions may also contain additives such as antifreeze and antifoam agents (column 3, lines 18-23), and active agents such as phytodrugs, phyto regulators, weed killers, insecticides, and fertilizers (column 4, lines 35-38). Capuzzi et al. teach a method of treating plants with adjuvant composition for the purpose of controlling pests. Note, Capuzzi et al. do not teach the adjuvant composition specifically comprising methyl oleate and glycerol monooleate. However, the methyl esters of fatty acid taught

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by Capuzzi et al embraces the methyl oleate compound recited in the claims and the nonionic surfactant taught by Capuzzi et al embraces the glycerol monooleate recited in the claims. In the absence of unexpected results for methyl oleate and glycerol monooleate in the adjuvant composition, it would have been obvious to one having ordinary skill in the art to include methyl oleate and glycerol monooleate in the adjuvant composition. One would have been motivated to do this since methyl oleate is a fatty acid methyl ester and glycerol monooleate is a nonionic surfactant.

Auda et al teach oil based emulsifiable concentrates and agrochemical formulations comprising at least one oil component, at least one saccharide surfactant, and at least one other nonionic surfactant (column 1, lines 9-15). When the composition contains water, it will form a microemulsion (lines 43-49). The oil component may be a mineral or vegetable oil, or a fatty acid ester such as methyl or ethyl laurate (lines 50-65). The saccharide surfactant may be an alkyl polyglucoside (column 2 lines 52-53). Other components may include antifoaming agents (column 3, line 35) and agrochemical agents such as herbicides, pesticides, insecticides, fungicides, or acaricides (lines 60-63), such as the herbicide glyphosate (column 5-6). et al. teach a method of treating plants with adjuvant composition for the purpose of controlling pests

One of ordinary skill in the art would be motivated to combine these references because they disclose the same adjuvant materials as having utility in making microemulsion agrochemical compositions wherein the composition can be applied to plants to control pests.

Thus it would have been prima facie obvious to the ordinary artisan at the time the invention was made to have combined applicants' oil, hydrophilic emulsifier, lipophilic co-emulsifier and customary additives into a single microemulsion composition because the prior art teaches that these components, and specific examples thereof as claimed herein, were known to be combinable in a single composition in order to produce a microemulsion composition which was useful for combining with agrochemicals.

*Response to Applicants argument*

The Applicants argue that Capuzzi et al.'s anionic surfactants added to applicants' microemulsion would materially affect the emulsifying properties of the nonionic surfactant by lowering the hydrophilic-lipophilic balance (HLB), which would cause microemulsion disruption. The Examiner argues that Applicants provide no data to support this statement.

The Applicants argue that Auda et al. teach water-in-oil compositions rather than oil-in-water compositions. The Examiner argues Auda et al. teach oil-in-water compositions at column 4 lines 9-14.

The Applicants argue that their adjuvant microemulsions are designed to combine with water soluble or substantially water soluble agrochemicals. This teaching of Applicants is not recited in the claims.

Applicants further argue that Auda et al.'s polyalkoxylated with an average of 2-40 alkylene oxide would position the HLB value to higher numbers, thereby shifting the emulsifiers outside of their lipophilic category. The Applicants argue that Auda et al.'s

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alkoxylated surfactants added to applicants' microemulsion would materially affect the emulsifying properties of the balance of nonionic surfactant by raising the hydrophilic-lipophilic balance (HLB), which would cause microemulsion disruption. The Examiner argues that Applicants provide no data to support this statement.

Applicants direct the Examiner's attention to Auda et al. page 1 line 25 – page 2 line 3, lines 11-14 to support that large amounts of alkoxylated nonionic surfactants are not favorable in instant invention, because said amounts yield a composition a) having poor biodegradability and b) that is phytotoxic to plants. Again, The Examiner argues that Applicants provide no data to support this statement. The Examiner argues that the alkoxylated nonionic surfactant can be present in as little as 10 parts of the overall composition. Furthermore, at page 1 line 25 – page 2 line 3, lines 11-14 Auda et al. do not exclude the alkoxylated nonionic surfactant.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/  
Primary Examiner, Art Unit 1616